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**FISCAL IMPACT STATEMENT**

**LS 7029**

**BILL NUMBER:** HB 1360

**NOTE PREPARED:** Jan 31, 2008

**BILL AMENDED:** Jan 29, 2008

**SUBJECT:** Mortgage Lending Issues.

**FIRST AUTHOR:** Rep. Bardon

**FIRST SPONSOR:** Sen. Bray

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

*Homeowner Protection Unit-* The bill requires the Homeowner Protection Unit (Unit) within the Attorney General's Office to establish a toll-free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. The bill requires the Unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies.

*DLGF Requirements-* The bill requires the Department of Local Government Finance (DLGF) to establish an electronic system for the collection and storage of sales disclosure form data for real estate conveyances. The bill provides that the system must allow closing agents to input the sales disclosure form data into the system; and (2) submit the form electronically to a data base maintained by the DLGF. It requires the DLGF to make the data base accessible to county auditors, county and township assessors, and the legislative services agency. The bill also requires the DLGF to establish electronic systems that automatically apply: (1) the mortgage deduction to a person entitled to the deduction; and (2) the homestead credit to a person entitled to the credit. It provides that the systems must allow closing agents to: (1) input information about the mortgage transaction that is the basis for the deduction or the credit; and (2) submit the form electronically to data bases maintained by the DLGF. It also requires the DLGF to make the data bases accessible to county auditors and requires a county auditor to accept an electronic filing for the mortgage deduction or the homestead credit if the filing is complete. The bill prohibits a county auditor from requiring any other information or form of identification for a person to claim the mortgage deduction or the homestead credit.

The bill requires the DLGF to establish an electronic system for the collection and storage of the: (1) names; and (2) license, registration, or certificate numbers; of certain professionals that participate in or assist with residential mortgage transactions. It provides that the system must allow closing agents to: (1) input the required information with respect to each professional involved in the transaction; and (2) submit the form electronically to a data base maintained by the DLGF. The bill requires the DLGF to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the homeowner protection unit in the attorney general's office.

*Closing Agent Requirements-* The bill, for residential mortgage transactions that close after June 30, 2008, and before January 1, 2010, requires a closing agent to do the following at the time of closing: (1) In the case of a first lien purchase money mortgage transaction, provide the customer with the sales disclosure form prescribed by the DLGF and the applications for the homestead credit and the mortgage deduction. (2) In the case of a refinancing, provide the customer with the application for the mortgage deduction. (3) Require the customer to complete and sign the form or forms provided. (3) Collect the signed and completed forms for filing. (4) Inform the customer of other specified property tax deductions by providing the customer with a form prescribed by the DLGF that describes the deductions. The bill requires the closing agent to file the signed forms with the appropriate county auditor. The bill, for a residential mortgage transaction that closes after December 31, 2009, requires a closing agent to input and submit the following information to the appropriate data bases maintained by the DLGF, as applicable: (1) Information to enable the customer to obtain the mortgage deduction and the homestead credit. (2) Sales disclosure form data. (4) The names and license, certificate, or registration numbers of specified professionals involved in the transaction.

*Background Check-* The bill specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). The bill specifies that the Securities Commissioner (Commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Commissioner from releasing the results of a national criminal history background check to a private entity.

*Multistate Automated Licensing System-* The bill allows the Commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers.

*Loan Broker Provisions-* The bill increases the amount of the bond that a licensed loan broker must maintain with the Commissioner from \$50,000 to \$100,000. The bill eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. The bill specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. The bill prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. The bill prohibits a person from performing specified acts in connection with a contract for the services of a loan broker.

*UCCC Regulation-* The bill provides that first lien mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC).

*Additional Provisions-* Requires a creditor, a mortgage servicer, or an agent of a creditor to acknowledge a written offer made in connection with a proposed short sale of property that is subject to a mortgage that is at least 10 days delinquent. Provides that the acknowledgment must be provided not later than 10 business days after the date of the offer. Requires the creditor, servicer, or agent to accept or reject the short sale offer not later than 20 business days after receipt of the offer. For an adjustable rate mortgage, requires a creditor to provide a one page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. Provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage.

*Deceptive Acts-* The bill specifies that a violation of the home loan practices act is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator.

*Attorney General-Collected Civil Penalties-* The bill provides that any civil penalties collected by the Attorney General shall be deposited in the home owner protection unit account in the General Fund.

*Recommendation of Home Loan By Creditor-* The bill prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not first conduct a reasonable inquiry into the prospective borrower's creditworthiness. The bill provides that if a creditor conducts a reasonable inquiry, the creditor is not liable if the borrower later defaults on a home loan issued by the creditor.

*48-Hour Advance on Closing Documents-* The bill requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing.

*Borrower's Rights-* The bill provides that if terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract.

*Statutory Damages-* The bill increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract.

*Felony Penalty Provision-* The bill enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony.

*Civil Penalty-* The bill increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000.

*Background Check-* The bill requires the Real Estate Appraiser Licensure and Certification Board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Board from releasing the results of a national criminal history background check to a private entity.

*Task Force-* The bill requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud.

*Indiana Housing and Community Development Authority (IHCDA) Report-* The bill requires the IHCDA to provide, not later than November 1, 2008, a report to the Legislative Council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures.

*Consumer Transaction Education-* The bill beginning in school year 2010, requires school corporations and accredited nonpublic schools to include in their curricula for grades 9 through 12 instruction designed to: (1) increase students' awareness of consumer transactions, including mortgage transactions; and (2) foster personal financial responsibility. The bill provides that a school corporation or an accredited nonpublic school may provide the instruction by integrating it into its mathematics curriculum. The bill requires the Department of Education (DOE) and the Department of Financial Institutions (DFI) to develop guidelines to assist teachers assigned to provide the instruction.

*DFI & Securities Division Cooperation-* The bill requires the Securities Commissioner and the Director of the Department of Financial Institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC.

*Repealers-* The bill repeals provisions that exclude mortgage transactions from the UCCC.

**Effective Date:** Upon passage; July 1, 2008; January 1, 2009.

**Explanation of State Expenditures:** *Homeowner Protection Unit (HPU)-* This provision would likely have a minimal impact on state expenditures. However, the Attorney General Consumer Protection Division already has a toll-free number. If that number were to meet the requirement of this provision, there would be no impact to the HPU. Generally, the cost of a toll-free call to a called entity is based the amount of usage of a toll-free number, the cost of the trunk lines to the entity, and possibly a monthly flat rate service charge. The Homeowner Protection Unit had approximately \$3,600 in local phone service expenditures at the end of FY 2007.

*DLGF Requirements/Databases -* This bill would require the DLGF to build and maintain statewide data systems pertaining to single-family residences by September 1, 2009 that would:

- 1) Provide for the entry and maintenance of sales disclosure data;
- 2) Record real estate transactions; and
- 3) Automatically apply the mortgage and standard deductions, and the homestead credit when they apply.

All of these data would be entered by closing agents and would be available to local officials and state agencies. The database would be used for transactions that close after December 31, 2009.

Currently, the DLGF receives sales disclosure data from the counties after the fact. However, the system required under this bill would serve as the point of entry for these forms.

The real estate transaction system would record each transaction that involves single-family residences. The data captured would include identifying data of the brokerage business, loan originator, principal broker, salesperson, title insurance company and agent, real estate appraiser, and the mortgagee.

The cost of development and maintenance of these systems is currently unknown, but could be substantial.

*Background Checks-* Additional national criminal background checks could require an increase in administrative time for the Indiana State Police Department (SPD) to complete. The impact to SPD time and expenditures would depend on the number of additional background checks ordered by the Director of the Department of Financial Institutions.

*Multistate Automated Licensing System-* The impact of the Multistate Automated Licensing System on Secretary of State expenditures will depend on the system used and the number of persons entered. The Securities Commissioner could place a reasonable processing fee on persons entered into the system. Access to a system maintained by a third party could reduce the amount of administrative time needed for the Securities Commissioner to investigate registrants. The Securities Commissioner would not be able to require a person exempt from broker licensure or registration to submit information or participate in the system.

*UCCC Regulation- Department of Financial Institutions Responsibilities-* Under the bill, the Department of Financial Institutions would be required to examine first mortgage lenders. Currently, the DFI only examines second mortgage lenders. Therefore, the DFI would be required to examine the holdings of first mortgage lenders including those second mortgage lenders that also make first mortgage loans. The impact of this provision on DFI expenditures and staff time is unknown as the number of potential lenders that would be regulated is unknown. The examination fees for the first mortgage lenders would be the same as other regulated lenders: \$1,000 or a volume fee set by the DFI, depending on which is applicable.

As of July 2, 2007, the DFI had four vacancies worth \$205,000 in salary. The DFI reverted \$133,127 from their operating account at the end of FY 2007. The DFI's dedicated fund appropriation for FY 2008 is \$8.5 M.

*Felony Penalty Provision-* State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. However, any expenditure increase is likely to be small. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to a Class A misdemeanor. The period of incarceration would depend upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

*Deceptive Acts-* The provision could increase actions taken by the Attorney General against persons committing a deceptive act under the Home Loan Protection Act.

*Task Force-* The Task Force would consist of appointees from the Office of Secretary of State (Securities Division), the Attorney General (Homeowner Protection Unit), the DFI, the Department of Insurance, the Indiana Real Estate Commission, and the Professional Licensing Agency via the Real Estate Appraiser Licensure and Certification Board. The Task Force would meet monthly to coordinate the state's efforts to

regulate, enforce laws, and prevent fraudulent activities with respect to home loan matters.

The Task Force would report to the Legislative Council annually on their activities for the prior year relating to coordination efforts of home loan matters. Each agency involved may require additional administrative time to produce the required reports, as well as for meetings, including preparation, by the members of the Task Force. It is likely that each participating agency would be able to complete their administrative duties for the Task Force within existing resources. This provision has an effective date of upon passage.

*IHCDA Report-* The IHCDA would likely require an increase in their workload to complete the required report. The IHCDA should be able to complete the report within their existing level of resources.

*Consumer Transaction Education-* This provision would require both the DOE and the DFI to develop instructional *guidelines* on personal consumer transaction education. Both departments would be able to carry out this provision within existing resources. The State Board of Education could adopt rules to implement the curriculum requirements within the course of a regularly scheduled meeting of the Board.

**Explanation of State Revenues:** *Closing Agent Requirements-* Under the bill, if the closing agent did not properly file electronically a sales disclosure form, they would be subject to a civil penalty of \$25 for each violation. The civil penalties would be placed into the Property Tax Replacement Fund (PTRF).

*Felony Penalty Provision-* Currently under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. The bill would increase the penalty to a Class D felony. If new violations of the Act were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

*Background Checks-* Persons required by the agencies under the bill to submit fingerprints for a national criminal background check would be required to pay all the costs involved for the check. A national criminal history background check costs a total of \$39, \$24 of which is given to the federal government. The remaining \$15 is deposited into the state General Fund. Last year, the SPD processed approximately 615,000 *limited* criminal background checks.

*UCCC Regulation-* Civil penalties in existing law would be applied as remedies for violations of this provision. In addition the bill would add a new civil penalty that could be assessed at the discretion of the DFI for UCCC violations under the bill. The amount of the civil penalty could not exceed \$10,000 per violation.

*Attorney General-Collected Civil Penalties (Deceptive Acts)-* General Fund revenues would increase to the Homeowner Protection Unit account if additional civil penalties are collected under this provision.

*Felony Penalty Provision-* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. However, any increase in revenue is likely to be small. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

*Civil Penalty-* The maximum civil penalty that could be assessed for a violation of the Home Loan Practice Act would be doubled to \$20,000. Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act, and civil penalties cannot exceed \$10,000 per injunction.

violation.

*Recommendation of Home Loan By Creditor-* For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act currently constitutes a Class A misdemeanor. If violations of the new provision for the inquiry of creditworthiness were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

*Loan Broker Provisions-* If fewer exemptions occur as a result of the bill there would be a reduction in revenue to the state. Currently, if an exemption is filed with the Securities Division, the fee for claiming an exemption is provided by statute at \$400. Recently, the Securities Commissioner had 1,091 brokers on file without a registration from the Securities Division due to statutory exemption.

A violation of a loan broker statute currently constitutes a Class D felony. Under current law, a violation is a Class C felony for knowingly sending false documents or making false statements to the Securities Commissioner during an examination or investigation. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.)

If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

**Explanation of Local Expenditures:** *Consumer Transaction Education-* The provision could increase school expenditures if an additional class, which would be required for graduation, were implemented. Included in the cost would be the purchase of suitable instructional materials, instructional time, and scheduling of class time. However, much if not all of the cost could be alleviated by a provision within the bill that would allow the instruction to occur within the math curriculum. Any increase in local expenditures would depend on local school board action.

*Felony Penalty Provision-* If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small. The maximum term of imprisonment for a Class A misdemeanor is up to one year.

**Explanation of Local Revenues:** *Deduction for Certain Discharged Mortgage Debt* – Because the deduction would serve to decrease taxable income, counties imposing local option income taxes could potentially experience a decrease in revenue from these taxes. The decrease would vary depending the number of mortgages affected and the county tax rate.

*Certified Copy of Praeceptum and Sale of Properties-* This provision could speed up sheriff sales of property. Any administrative costs for clerks to provide certified copies of a praecipe to sheriffs would be minimal.

**State Agencies Affected:** IHCD; DLGF; Office of the Secretary of State Securities Division; DFI; SPD; DOE.

**Local Agencies Affected:** Trial courts, local law enforcement agencies, county auditors; schools.

**Information Sources:** Stephanie Reeve, IHCD; Jeff Bush, Securities Commission, Office of the Secretary of State; John Schroeder, DFI;

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